



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No FMCSA-2015-0372]

49 CFR Part 372

RIN 2126-AB86

Commercial Zones at International Border with Mexico

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA finalizes the interim final rule (IFR) published on February 24, 2016, in the Federal Register expanding the commercial zone for the City of El Paso, TX. The commercial zone now includes the new Tornillo-Guadalupe international bridge and port of entry on the border with Mexico. The Agency sought, but did not receive, public comments regarding what should constitute the eastern boundary of FMCSA's commercial zone for the City of El Paso, TX. Therefore, FMCSA is adopting the commercial zone as defined in the February 24, 2016, IFR.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Bryan Price, Chief, North American Borders Division, FMCSA, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Telephone (202) 680-4831; e-mail bryan.price@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Legal Basis

The statutes authorizing FMCSA to regulate certain economic activities of motor carriers provide for several exemptions. One of them, the “commercial zone” exemption, now set out in 49 U.S.C. 13506(b)(1), provides that, except to the extent FMCSA finds it necessary to exercise jurisdiction to carry out the transportation policy of 49 U.S.C. 13101, FMCSA has no jurisdiction under 49 U.S.C. subtitle IV, part B¹ over transportation provided entirely in a municipality, in contiguous municipalities, or in a zone that is adjacent to, and commercially a part of, the municipality or municipalities, except when the transportation is under common control, management, or arrangement for a continuous carriage or shipment to or from a place outside the municipality, municipalities, or zone. The statute does not specify the geographic limits of a commercial zone. From the outset commercial zone limits have usually been established by agency rulemaking under authority provided by 49 U.S.C. 13301(a). Authority to administer the provisions of 49 U.S.C. 13506 has been delegated by the Secretary to the Administrator of FMCSA. 49 CFR 1.87(a)(3).

The interim final rule establishing the expanded commercial zone for the City of El Paso was made effective on February 24, 2016, the date of publication in the Federal

¹ This commercial zone exemption thus applies only to commercial regulations applicable to motor carriers, such as the requirements for operating authority set out in 49 U.S.C. 13901-13904 and 49 CFR parts 365, and 390. Mexico-domiciled motor carriers operating in commercial zones at the international border are required to obtain certificates of registration under 49 U.S.C. 13902(c) and 49 CFR part 368. At one time, motor carrier operations in commercial zones were exempt from most safety regulations, but since 1989, such operations have been subject to all of the Federal Motor Carrier Safety Regulations, with the exception of a small, grandfathered population of medically unqualified drivers who were operating in commercial zones between November 1987 and November 1988. 49 U.S.C. 31136(f), Federal Motor Carrier Safety Regulations; General, 53 FR 18042, 18044-49 (May 19, 1988) and Federal Motor Carrier Safety Regulations; General; Exempt Intracity Zone; Foreign Motor Carriers, 54 FR 12200 (Mar. 24, 1989).

Register. This final rule confirms the exemption granted by the IFR and is effective upon publication. 5 U.S.C. 553(d)(1).

Background

A history of the expansion of the City of El Paso's commercial zone may be found in the February 24, 2016, IFR (81 FR 9117). In that IFR, FMCSA established a commercial zone for the City of El Paso that includes the new border crossing, which, unlike the old border crossing, is being used by motor carriers of both property and passengers. The expanded commercial zone includes the intersection of Interstate 10 with O.T. Smith Road and Texas Farm-to-Market Road 3380 so that motor carriers that have authority from FMCSA to operate only within the El Paso commercial zone may use the new international bridge and will be able to drive to and from the intersection of Interstate 10 and O.T. Smith Road/Farm-to-Market Road 3380.

The specific description of the commercial zone for the City of El Paso set out in 49 CFR 372.247, published at 81 FR 9117, includes all of the area previously within the commercial zone under the general rule in 49 CFR 372.241. It added a provision expanding the zone to include all unincorporated areas within 15 miles of the corporate boundaries of the City of San Elizario, TX. The February 24, 2016, IFR's expansion of the commercial zone² added 84 square miles to the previous El Paso commercial zone.

FMCSA also sought public comment on whether the boundary of the expanded commercial zone should instead be the eastern boundary³ of the County of El Paso.

No public comments, however, were received concerning either of the proposed

² A map depicting the expanded commercial zone under the EA's alternative 2 is included in the final EA's Appendix A as Figure 2.

³ A map depicting the expanded commercial zone under the EA's alternative 3 is included in the final EA as Figure 3.

commercial zones. FMCSA is therefore adopting as final the commercial zone set out in 49 CFR 372.247.

Rulemaking Analyses

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, Jan. 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, Feb. 26, 1979). Thus, the Office of Management and Budget (OMB) did not review this document. The final rule has no costs, as it exempts motor carriers from obtaining FMCSA operating authority when they operate in interstate or foreign commerce wholly within the El Paso, Texas commercial zone as defined by 49 CFR 372.247; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis, because this action is not subject to notice and comment under section 553(b) of the Administrative Procedure Act.⁴

Unfunded Mandates Reform Act

The final rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, et seq.), that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private

⁴ 5 U.S.C 553(b).

sector, of \$155 million (which is the value of \$100 million in 1995 dollars after adjusting for inflation to 2014 dollars) or more in any 1 year.

E.O. 13132 (Federalism)

A rule has implications for Federalism under section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between national government and the States, or on the distribution of power and responsibilities among various levels of government.” FMCSA has determined that this rule will not have substantial direct effects on States, nor will it limit the policymaking discretion of States. Nothing in this document preempts or modifies any provision of State law or regulation, imposes substantial direct unreimbursed compliance costs on any State, or diminishes the power of any State to enforce its own laws. Accordingly, the final rule does not have Federalism implications warranting the application of E.O. 13132.

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this final rule.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175 titled, “Consultation and Coordination with Indian Tribal Governments,” because they would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this final rule, nor are there any revisions to existing, approved collections of information.

National Environmental Policy Act and Clean Air Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) requires Federal agencies to integrate environmental values into their decision-making processes by requiring Federal agencies to consider the potential environmental impacts of their proposed actions. In accordance with FMCSA's Order 5610.1, NEPA Implementing Procedures and Policy for Considering Environmental Impacts, and other applicable requirements, FMCSA prepared an Environmental Assessment (EA) to analyze the potential impacts of the IFR for the expansion of the City of El Paso, TX, commercial zone. FMCSA published a notice of availability of the draft EA, giving the public an opportunity to comment on it, on January 15, 2016 (81 FR 2291). FMCSA also published the IFR, giving the public an opportunity to comment on it, the final EA, and the Finding of No Significant Impact (FONSI), on February 24, 2016 (81 FR 9117). The final EA and FONSI are available for inspection or copying in the Regulations.gov Web site at <http://www.regulations.gov>. No comments were received by the end of both comment periods. Because the implementation of this action will only expand an existing commercial zone, FMCSA found that endangered species, cultural resources protected

under the National Historic Preservation Act, wetlands, and resources protected under Section 4(f) of the DOT Act of 1966, 49 U.S.C. 303, as amended by Pub. L. 109-59 (Aug. 10, 2005), are not impacted. The impact areas that may be affected and were evaluated in this EA included air quality, noise, socioeconomics, environmental justice, public health and safety, and hazardous materials. FMCSA anticipates that making final the expanded El Paso commercial zone will have certain impacts related principally to air emissions and land use from economic growth; however, neither of these factors individually or collectively will cause significant impacts. In addition, the economic impact will have beneficial impacts to the quality of life in terms of job creation.

FMCSA also analyzed this final rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7506(c)), and implementing regulations promulgated by the Environmental Protection Agency. None of the alternatives considered in the final EA is located in a nonattainment or maintenance area for any of the criteria pollutants; therefore, FMCSA has determined that it is not required to perform a CAA general conformity analysis.

E.O. 12898 (Environmental Justice)

E.O. 12898 (59 FR 7629, Feb. 16, 1994), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, establishes Federal executive policy on environmental justice. The E.O.'s main provision directs Federal agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. FMCSA evaluated the environmental

effects of this final rule in accordance with E.O. 12898 and determined that there are no environmental justice issues associated with its provisions, nor any collective environmental impact resulting from its promulgation. None of the alternatives analyzed in the EA will result in high and adverse environmental impacts on minority or low-income populations.

E.O. 13211 (Energy Effects)

FMCSA has analyzed this final rule under Executive Order 13211, titled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” The Agency has determined that the rule(s) are not a “significant energy action” under that Executive Order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no Statement of Energy Effects is required.

E.O. 13045 (Protection of Children)

Executive Order 13045 titled, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, Apr. 23, 1997), requires agencies issuing “economically significant” rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. As discussed previously, the final rule is not economically significant. Therefore, no analysis of the impacts on children is required.

E.O. 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 titled, “Civil Justice Reform,” to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 12630 (Taking of Private Property)

This final rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630 titled, “Governmental Actions and Interference with Constitutionally Protected Property Rights.”

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt technical standards, there is no need to submit a separate statement to OMB on this matter.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108– 447, Division H, Title I, 118 Stat. 2809 at 3268, Dec. 8, 2004) requires DOT and certain other Federal agencies to conduct a privacy impact assessment of each rule that will affect the privacy of individuals. Because this final rule will not affect the privacy of individuals, FMCSA did not conduct a separate privacy impact assessment.

List of Subjects in 49 CFR Part 372

Agricultural commodities, Buses, Cooperatives, Freight forwarders, Motor carriers, Moving of household goods, Seafood.

For reasons set forth in the preamble, FMCSA adopts the interim rule published February 24, 2016 (81 FR 9117), as final without change.

Issued pursuant to authority delegated in 49 CFR 1.87 on: May 17, 2016

T. F. Scott Darling, III,
Acting Administrator.

[FR Doc. 2016-12184 Filed: 5/24/2016 8:45 am; Publication Date: 5/25/2016]